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RICHARD A. RYAN, ATTORNEY AT LAW
8497 N. MILLBROOK AVENUE, SUITE 104
FRESNO, CA 93720

EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,145

Applicant(s)

ROSE, DONNIE

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

8

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6,7, 10-15, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitterman et al. for substantially the same reasons stated in the first Office Action.

The patent to Kitterman shows an insect destroying device having an elongated vertical support 12 having a first end and a second end (not labeled). Kitterman shows a means for supporting 14 the vertical support member. Does applicant wish to invoke 35 USC 112, sixth paragraph for means plus function? Absent a response, the examiner will employ the criteria of broadest reasonable interpretation of the claim terms.

Kitterman shows an insect attracting light 60. Kitterman shows an insect immobilizing element with an adhesive surface 30 mounted on a tubular member 100. The insect immobilizing element is mounted on the vertical support member. Kitterman shows a source of electrical power 55 connected to the insect attracting light. In reference to claims 1, 15, Kitterman shows all of the elements recited with the exception of the panel member. Kitterman shows a tubular member which could be considered as a curved panel, but, at any rate, it would have been obvious to employ a panel member since merely one equivalent member is being substituted for another and the function is the

same. See *In re Rose*, 105 USPQ 137. The examiner takes Official Notice that adhesive panel members are old and well known in the art of insect trapping. In reference to claim 2, Kitterman shows the first end of the vertical support member as being tubular. In reference to claim 3, Kitterman shows a post 16 which can be considered to have a lower pole section and an upper pole section. The lower pole section is connected to the ground support member 14 and the upper pole section is connected to the insect immobilizing element. The division between the two pole sections can be arbitrarily taken to be at about the mid-point of the post. In reference to claim 4, Kitterman shows the support means as a ground support member 14 configured to cooperatively engage the first end of the vertical support member. In reference to claim 6, Kitterman shows the support means a first end shaped and configured to attach the vertical support member to a support surface. In reference to claim 7, Kitterman shows a frame 16, 18, 22, 24, 40, 41 substantially bounding the adhesive and the sleeve. In reference to claim 10, Kitterman can inherently replace the adhesive panel member. In reference to claim 11, Kitterman shows the adhesive surface comprising a sticky surface. In reference to claim 12, Kitterman shows the insect immobilizing element being generally perpendicular to the vertical support member, but it would have been obvious to align the insect immobilization surface in a parallel alignment with the vertical support member since the function is the same and no unexpected results were shown. See the citation to *In re Japikse*, below. In reference to claim 18, Kitterman shows a battery 55 and a solar panel or photovoltaic panel 62. In reference to claims 13, 14 and 19, Kitterman shows means for recharging

the battery as a solar panel 62 mounted on the second end of the vertical support member noting Figs. 8 and 11.

3. Claims 5, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitterman et al. as applied to claim 1 above, and further in view of Petry for substantially the same reasons stated in the first Office Action.

The patents to Kitterman and Petry show insect trapping devices. Kitterman has been discussed above and does not show the ground support member being configured to be partially inserted into the support surface. Figure 7 of Kitterman shows the vertical support member being inserted into the ground. The patent to Petry shows a ground support member V configured to be inserted into the support surface and a vertical support member U configured to be attached to the ground support member by connector X. In reference to claims 5, 16, it would have been obvious to provide Kitterman with a ground support member as shown by Petry since merely one ground support member is being substituted for another and the function is the same.

4. Claims 8-9, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitterman et al. as applied to claim 1 above, and further in view of Cook for substantially the same reasons stated in the first Office Action.

The patents to Kitterman and Cook show insect trapping devices. Kitterman has been discussed above and does not show the panel member as a mesh screen having a plurality of openings. The patent to Cook shows an insect trap having a panel member 28 in Fig. 4 made from a coarse screening having a plurality of openings and coated with an adhesive substance 112. In reference to claims 8 and 17, it would have been

obvious to provide Kitterman with a panel member comprising a mesh screen as shown by Cook since merely one panel is being substituted for another and the function is the same. In reference to claim 17, it is not clear if the opening in Cook are configured to allow small flying insects to pass therethrough or not. However, it would have been obvious to configure the openings to allow small non-target insects to fly through the openings since routine experimentation would be used to determine the size of the openings absent a showing of unexpected results. In reference to claim 9, Kitterman discloses an internal photo sensor configured to control the insect attracting light as disclosed in column 4, lines 43-46.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Kitterman as applied to claim 1 above, and further in view of Petry and Cook.

The patents to Kitterman, Petry and Cook show insect traps and have been discussed above. In reference to claim 20, see the rejections of claims 1, 5, 8, 9, 16, 17, as stated above.

Response to Arguments

6. Applicant's arguments filed March 17, 2005 have been fully considered but they are not persuasive. Applicant response overcomes the rejection under 35 USC 112, second paragraph. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one

of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant argues that Kitterman shows a horizontal trapping component and that a vertical trapping component solves the problems of dust or other particles that will settle on the horizontal trapping component. However, with an adhesive trapping component, dust will stick to both horizontal and vertical trapping components. At any rate, it would have been obvious to employ a vertical trapping component since the function is the same and no showing or unexpected results was made. Also, see *In re Japikse*, 86 USPQ 70 which states that the rearrangement of location of parts is obvious and *In re Aller et al.*, 105 USPQ 233 and *In re Dailey et al.*, 149 USPQ 47 which state that changes in degree and shape are obvious. As to the rigid or semi-rigid panel, Kitterman can be considered to have a semi-rigid adhesive given broadest reasonable interpretation since the adhesive conforms to the shape of the sleeve 125. In reference to claim 7, Kitterman shows a frame 22, 24, 41, 42

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kurt Rowan
Primary Examiner
Art Unit 3643

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